

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEVADA

3 Douglas Clemons,

4 Petitioner

5 v.

6 Terry Royal, et al.,

7 Respondents

Case No.: 2:24-cv-02018-CDS-EJY

Order Directing Service of the Petition and
Denying Motion for Appointment of
Counsel

[ECF Nos. 2, 8]

9 Douglas Clemons, who is incarcerated in Ely State Prison, has submitted a pro se
10 28 U.S.C. § 2254 amended petition for writ of habeas corpus. ECF No. 8. The Court has
11 conducted a preliminary review of the petition under Rule 4 of the Rules Governing Section
12 2254 Cases in the United States District Courts and directs that it be served on respondents.

13 A petition for writ of federal habeas corpus should include all claims for relief of which
14 petitioner is aware. If petitioner fails to include such a claim in his petition, he may be forever
15 barred from seeking federal habeas relief upon that claim. *See* 28 U.S.C. §2244(b) (successive
16 petitions). If petitioner is aware of any claim not included in his petition, he should notify the
17 Court of that as soon as possible, perhaps by means of a motion to amend his petition to add the
18 claim.

19 Clemons has also submitted a motion for appointment of counsel. ECF No. 2. There is no
20 constitutional right to appointed counsel in a federal habeas corpus proceeding. *Luna v. Kernan*,
21 784 F.3d 640, 642 (9th Cir. 2015) (citing *Lawrence v. Florida*, 549 U.S. 327, 336–37 (2007)). An
22 indigent petitioner may request appointed counsel to pursue habeas relief. 18 U.S.C.
23 § 3006A(a)(2)(B). The decision to appoint counsel is generally discretionary. *Id.* § 3006A(a)(2)
24 (authorizing appointment of counsel “when the interests of justice so require”). However,
25 counsel is appropriate if the complexities of the case are such that denial of counsel would
26 amount to a denial of due process, and where the petitioner is so uneducated that he is incapable

1 of fairly presenting his claims. *LaMere v. Risley*, 827 F.2d 622, 626 (9th Cir. 1987); *Brown v. United*
2 *States*, 623 F.2d 54, 61 (9th Cir. 1980). Here, Clemons' single claim of ineffective assistance of
3 counsel with respect to his *Alford* plea is clearly presented and does not appear to be complex.
4 Because I conclude that counsel is not warranted, the motion is denied.

5 Conclusion

6 It is therefore ordered that the Clerk of Court detach, file, and electronically SERVE the
7 amended petition (ECF No. 8) on respondents.

8 The Clerk is directed to add Aaron D. Ford, Nevada Attorney General, as counsel for
9 respondents and provide respondents an electronic copy of all items previously filed in this case
10 by regenerating the Notice of Electronic Filing to the office of the AG only.

11 It is further ordered that petitioner's motion for appointment of counsel [ECF No. 2] is
12 denied.

13 It is further ordered that respondents file a response to the petition, including potentially
14 by motion to dismiss, within 90 days of service of the petition, with any requests for relief by
15 petitioner by motion otherwise being subject to the normal briefing schedule under the Local
16 Rules. Any response filed is to comply with the remaining provisions below, which are entered
17 pursuant to Habeas Rule 5.

18 It is further ordered that any procedural defenses raised by respondents in this case be
19 raised together in a single consolidated motion to dismiss. In other words, the Court does not
20 wish to address any procedural defenses raised herein either in seriatum fashion in multiple
21 successive motions to dismiss or embedded in the answer. Procedural defenses omitted from
22 such motion to dismiss will be subject to potential waiver. Respondents should not file a
23 response in this case that consolidates their procedural defenses, if any, with their response on
24 the merits, except pursuant to 28 U.S.C. § 2254(b)(2) as to any unexhausted claims clearly
25 lacking merit. If respondents do seek dismissal of unexhausted claims under § 2254(b)(2): (a)
26 they will do so within the single motion to dismiss not in the answer; and (b) they will

1 specifically direct their argument to the standard for dismissal under § 2254(b)(2) set forth in
2 *Cassett v. Stewart*, 406 F.3d 614, 623–24 (9th Cir. 2005). In short, no procedural defenses,
3 including exhaustion, should be included with the merits in an answer. All procedural defenses,
4 including exhaustion, instead must be raised by motion to dismiss.

5 It is further ordered that, in any answer filed on the merits, respondents specifically cite
6 to and address the applicable state court written decision and state court record materials, if
7 any, regarding each claim within the response as to that claim.

8 It is further ordered that petitioner has **45 days** from service of the answer, motion to
9 dismiss, or other response to file a reply or opposition, with any other requests for relief by
10 respondents by motion otherwise being subject to the normal briefing schedule under the Local
11 Rules.

12 It is further ordered that any additional state court record exhibits filed herein by either
13 petitioner or respondents be filed with a separate index of exhibits identifying the exhibits by
14 number. The parties will identify filed CM/ECF attachments by the number of the exhibit in the
15 attachment. Each exhibit must be filed as a separate attachment.

16 It is further ordered that, at this time, the parties send courtesy copies of **any responsive**
17 **pleading or motion and all INDICES OF EXHIBITS ONLY** to the Reno Division of this Court.
18 Courtesy copies should be mailed to the Clerk of Court, 400 S. Virginia St., Reno, NV, 89501,
19 and directed to the attention of “Staff Attorney” on the outside of the mailing address label. No
20 further courtesy copies are required unless and until requested by the Court.

21 Dated: April 10, 2025

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24 Cristina D. Silva
25 United States District Judge
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